

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BERNARION DELSHAWN VANLEER, a/k/a/  
CATREL MARQUION VANLEER and  
BERNARION DASHAWN VANLEER,

Defendant-Appellant.

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UNPUBLISHED

October 27, 2005

No. 255084

Oakland Circuit Court

LC No. 03-188290-FH

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for first-degree home invasion, MCL 750.110a(2), and domestic violence, MCL 750.81(2.) Defendant was sentenced to fifty-one months to twenty years' imprisonment for his first-degree home invasion conviction and ninety-three days in jail for his domestic violence conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant challenges the sufficiency of the evidence presented at trial for his first-degree home invasion conviction. In reviewing the sufficiency of the evidence, we view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

The elements of first-degree home invasion applicable to the present facts are that the defendant (1) entered a dwelling without permission, (2) committed the offense of assault while present in the dwelling, and (3) another person was lawfully present in the dwelling. CJI2d 25.2c; MCL 750.110a(2).

Defendant contends he had permission to enter Constance Atkins' apartment because he was living there. Defendant, however, admitted that he did not have a key to the apartment, nor was his name on the lease. Defendant's aunt's address was on his driver's license. Atkins testified that defendant did not live with her, and that he never had lived with her. She testified that as soon as she opened her apartment door, not knowing defendant was standing on the other side, he forced himself into through the doorway while pointing a sharp metal object at her and

pushing her into the apartment. A rational trier of fact could find beyond a reasonable doubt that defendant entered Atkins' home without permission.

The second and third elements of first-degree home invasion are met by Atkin's presence in the apartment, and defendant's domestic violence conviction for his actions within the apartment after he pushed defendant through the door. Thus, the prosecution presented sufficient evidence to support defendant's conviction for first-degree home invasion.

Additionally, defendant argues Offense Variable (OV) 1 should have been scored at five points instead of 15 points. We disagree. We review OV scoring to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Under MCL 777.31(1)(b), the trial court may score OV 1 at 15 points if the court finds evidence that "the victim had a reasonable apprehension of an immediate battery when threatened with a knife or other cutting or stabbing weapon." If a weapon is displayed or implied, the court may score five points. MCL 777.31(1)(d).

Here, evidence exists to support the determination that defendant used a knife or other cutting or stabbing weapon and that Atkins was reasonably afraid of being injured by defendant. Defendant pointed "a sharp piece of metal" at Atkins as she opened her door. Defendant then pushed Atkins through the door and forced himself into the house. Atkins testified that after defendant was in the house. "[she] was scared because [she] didn't know what would happen." Thus, the trial court could reasonably infer that Atkins was in reasonable apprehension of an immediate battery when defendant threatened her with the sharp metal object upon opening the door, supporting the OV 1 score of 15 points.

Even if the trial court's OV 1 determination lacked any evidentiary support, and defendant's minimum sentence was determined under the C-IV range instead of the C-V range, his minimum sentence of 51 months is squarely within the C-IV range of 45 to 75 months, and therefore, must be affirmed. MCL 777.63; MCL 769.34(10).

Affirmed.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Kurtis T. Wilder